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C O N F I D E N T I A L GENEVA 000495

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TAGS: [PHUM](#) [PREL](#) [UNHRC](#)
SUBJECT: EFFECTS OF U.S. HUMAN RIGHTS COUNCIL DISENGAGEMENT
BEGIN TO PLAY OUT IN COUNCIL'S EIGHTH SESSION

REF: A. GENEVA 256
[1](#)B. GENEVA 489

Classified By: Ambassador Warren W. Tichenor. Reasons: 1.4 (b/d).

[1](#)1. (C) SUMMARY: The Human Rights Council's Eighth Session, which ran from June 3-18, featured renewed efforts by the Non-Aligned Movement (NAM) and the Organization of the Islamic Conference (OIC) to weaken human rights instruments, although with less drama than in previous sessions. In cases where the U.S. del was instructed to engage, our participation helped forestall negative results. Like-mindeds used the session to highlight country situations such as Burma and Zimbabwe, but a number of interlocutors told us that our failure to take part on such issues diluted the impact. The del succeeded in countering rumors, some of them no doubt planted by our opponents, about alleged ulterior USG motives of our disengagement policy (e.g., that we seek to avoid review under Universal Periodic Review), though our reduced presence on the ground slowed our ability to learn about such rumors. The session showed that we retain influence but that it is significantly constrained and dependent on cooperation from like-mindeds; we already see hints that our heavy reliance on them for information and cooperation cannot easily be sustained over the long term, particularly if we provide no reciprocal help to them in the Council. The broader impact will become apparent in future sessions when basic human rights principles come under greater attack than in the relatively short and muted Eighth Session. END SUMMARY.

[1](#)2. (SBU) The Council's Eighth Session featured appreciably fewer resolutions than the preceding one. Remarkably, there were no resolutions concerning the Occupied Palestinian Territories (OPT), and OIC states found themselves surprised and briefly on the defensive when Richard Falk, the new Special Rapporteur on the OPT, unexpectedly proposed expanding his mandate to including violations of international humanitarian law committed by Palestinians as well as by Israel. Although that issue is yet to be resolved, Falk's proposal is almost certain to be rejected. One week out of the two-and-a-half week session centered on the plenary phase of the Universal Periodic Reviews (UPRs) of the 32 countries in the first two tranches of that new mechanism. This was the last session under Council President Doru Costea of Romania, with Nigerian PermRep Martin Uhomoibhi assuming the presidency the day after the session closed. (Ref b discusses the UPR issue; septels will discuss the OPT issue in greater detail, as well as offering insights about Uhomoibhi.)

GOOD COOPERATION FROM CLOSE ALLIES, FOR NOW

[1](#)3. (C) An important element of the session centered on reviews of existing mandates. In intensive negotiations on the torture resolution, Denmark supported our participation in co-sponsors' meetings based on previous co-sponsorship,

though we let them know that they should not count on our co-sponsorship this time. In addition, on the substance, they agreed to keep out highly problematic assertions about the status of the Convention Against Torture's prohibition on cruel, inhuman and degrading treatment; to follow our preferred formulation for the legal status of the norm prohibiting torture; and to keep out a number of proposals that targeted USG detention facilities specifically. The UK, Canada and Australia also provided some support on these issues, while virtually all others, including other EU countries, were prepared to ride roughshod over our redlines.

While we were able to persuade Denmark and a few others to stay with us based on our close cooperation on these GWOT issues and our strong interest in continuing to co-sponsor these resolutions in the General Assembly, these were clearly close calls.

14. (C) In the extrajudicial, summary and arbitrary (ESA) executions resolution negotiations, we were similarly able to keep out the most problematic proposals that would have confused IHL and human rights law concepts. In the migrants resolution negotiations, we worked closely with the UK and Canada to avoid referring to the Migrant Workers Convention as having established new international norms on par with customary international law. In both of these resolutions, our presence and participation helped avoid some near misses on Department redlines.

15. (C) Finally, we enjoyed good reporting from the UK and a couple of other like-minded delegations on a wide variety of issues arising in informal meetings in which we were not authorized to participate but in which the USG has a strong interest (e.g., business and human rights). Given that this

intelligence-sharing became essentially a one-way street at this session, however, particularly because we turned down requests from like-minded to help them on issues such as Burma, Zimbabwe and the Trafficking in Persons mandate, we already have seen signs that our friends' enthusiasm to meet regularly with us on these issues has and will be diminished further. As one close EU ally told us, our ability to offer little if anything in the Council will naturally mean that like-minded will gravitate toward their own orbits, if for no other reason than because in the rush of activity during Council sessions, talking with us will become a lower priority.

CONTROVERSY OVER MANDATE HOLDERS' SELECTION, RENEWAL

16. (SBU) Fueled in part by several countries' dissatisfaction with the reports of Special Rapporteurs Philip Alston (executions) and Manfred Nowak (torture), controversy also emerged over the Council's usual practice of extending mandate holders for a second term without debate. India and Russia led a charge to link the presumption in favor of renewal to "good behavior," such that no such presumption would apply where a member state had complained about a mandate holder. While Council President Costea helped head off a resolution on this subject, he did so by way of a non-paper of his own that contains the same problematic linkage between renewal and complaints.

17. (C) The session also saw the selection of several new mandate holders. As previously, the process involved selection of a "short list" by a Consultative Group made up of a representative from each regional group, followed by acclamation by the Council of a final list presented by Costea. A major spat between the Africa and Latin American groups erupted in the end-game over the selection for the Freedom of Expression mandate. Beyond that, however, there is a growing sense in the Council that the entire process is excessively opaque and politicized. There is no formal input by countries into the selection process beyond the nominations themselves, yet influential players (e.g., Algeria, Russia and other Consultative Group members) wield disproportionate influence behind the scenes. Once again, not a single USG-nominated candidate made the CG's short list.

¶18. (C) In terms of Council activity, controversy also flared over OIC complaints that an NGO had linked Islam with female genital mutilation and honor killings. Many observers saw the complaint as part of the effort of the OIC and its allies to limit NGO interventions (as described further in septel discussion of UPR). Beyond that, however, Egypt demanded that statements claiming a link between a religion and human rights violations be disallowed. Costea agreed to that limit, telling the press that religions deserve special protection in Council discussions because of their complexity and sensitivity. Asked by the Ambassador about the meaning of his ruling, Costea said on June 23 that it only applied to a direct and exclusive link of any religion with a human rights violation; religions could still be discussed in Council deliberations, but discreet human rights violations could not be associated with a particular religion more broadly. It remains unclear how Costea's ruling will be applied by his successor, Uhomoibhi

ADDRESSING HUMAN RIGHTS SITUATIONS

¶19. (C) The session also featured most of a day devoted to human rights situations (Item 4). In a segment devoted to the follow-up to the December Special Session on Burma, Tomas Quintana, the newly appointed Special Rapporteur on Burma (ref a), presented a report on developments in that country, underscoring that he had renewed his predecessor's request to visit the country but been given no reply. Slovenia (speaking for the EU), Germany, Japan, Canada and Singapore were among the countries making interventions critical of the Burmese government; India, the Philippines, Thailand, Sri Lanka and others, by contrast, argued that Burma had made progress in its human rights record. An EU-sponsored resolution critical of Burma subsequently passed by consensus, having been watered down somewhat by China, India and others. Our Slovenian interlocutors told us that, had we been active on Burma this time as we had been in the March session, the resolution might well have been stronger.

¶10. (C) Item 4 also offered the opportunity to highlight other troubling country situations. Zimbabwe and Sudan received some pride of place, with North Korea, Somalia, Sri Lanka, Iran (including the treatment of the Baha'i) and the Democratic Republic of the Congo also addressed. Sweden was joined by two NGOs in mentioning Tibet; China voiced regret

that Tibet was being raised. Several of our interlocutors, commenting that Item 4 seemed more muted than usual, attributed this in part to lack of a USG intervention on any country situation and said that this diluted the impact of their own statements.

COUNTERING FALSE RUMORS

¶11. (C) The USG decision to disengage from the Council also proved a key theme of the session. U.S. del received numerous queries about the decision and many calls for its public articulation. Rumors also began to circulate -- and even initially gained resonance with members of some of our like-minded dels -- that the USG decision resulted from ulterior motives, including to avoid cooperating with Special Rapporteurs and to avoid undergoing UPR review. Although we were able largely to nip such rumors in the bud, a number of dels commented that publicly laying out the justified rationale for our decision could have avoided much of the problem.

COMMENT

¶12. (C) The USG assumed its new posture toward the Council three days into the Eighth Session, but while it is too early to draw firm conclusions about its implications, the session offered some initial lessons. It demonstrated that we retain influence when we engage, even if we do so selectively. At

the same time, it showed that we limit our effectiveness, and find ourselves dependent on the cooperation of main sponsors, especially when we do not participate in negotiations of resolutions. The session also showed that, for now, we can continue to rely to a certain extent on like-mindeds, both informally and through groupings like WEOG and JUSCANZ, to provide us with the kind of information needed to head off serious problems. At the same time, we detect an impatience even among some like-mindeds with our new posture, which could limit our access to information over the longer term. Because we are no longer active players in the Council, we find that dels are less likely to turn to us when an issue arises because we have little to offer. This could affect our ability to prevent bad precedents in resolutions and slow down our capacity to detect disturbing trends in the future. The Eighth Session, for all its controversies, was relatively muted and did not result in major setbacks for international human rights law. Future sessions are likely to prove more troublesome, and could pose far more difficult tests for our ability to respond given our new posture.

TICHENOR